

## **SECOND DIVISION**

**[ G.R. No. 115755, December 04, 2000 ]**

**IMELDA B. DAMASCO, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION, MANILA GLASS SUPPLY AND  
BONIFACIO K. SIA, RESPONDENTS.**

**[G.R. No. 116101]**

**BONIFACIO K. SIA AND MANILA GLASS SUPPLY, PETITIONERS,  
VS. NATIONAL LABOR RELATIONS COMMISSION, LABOR  
ARBITER DOMINADOR B. SALUDARES, DEPUTY SHERIFF  
ANTONIO T. DATU AND IMELDA B. DAMASCO, RESPONDENTS.**

### **DECISION**

**QUISUMBING, J.:**

These two petitions for certiorari seek to annul the decision promulgated by public respondent National Labor Relations Commission (NLRC) on March 21, 1994 in NLRC CA No. L-001159, and its resolution dated May 11, 1994, which denied petitioners' respective motions for reconsideration.

Ms. Imelda Damasco is the petitioner in G.R. No. 115755 and private respondent in G.R. No. 116101. She was a regular sales clerk in Manila Glass Supply in Olongapo City.

Manila Glass Supply is private respondent in G.R. No. 115755 and petitioner in G.R. No. 116101. It is a sole proprietorship engaged in the sale of glass with main store in Olongapo City and branch in Metro Manila. Bonifacio K. Sia is private respondent in G.R. No. 115755 and petitioner in G.R. No. 116101. He is the owner of Manila Glass Supply.

The factual background of this case as summarized by the labor arbiter is as follows:

"That she [Damasco] was employed by respondents [Manila Glass Supply and Bonifacio K. Sia] as Sales Clerk on January 30, 1992, receiving lately a daily wage of P140.00; that as sales clerk, she was ordered to do almost all the works related to the glass business of respondents including the cutting, sales and delivery of glass as well as balancing, accounting and checking of capital and profits every end of the month; that she was made to work from 8:30 in the morning up to 9:30 in the evening continuously from Monday to Sunday without having been paid overtime pay, rest day pay and holiday pay; that during the period of her employment, she was not paid any 13th month pay as well as five (5) days service incentive leave pay; that on August 28, 1992 at around 7:00 o'clock in the evening, while she was working, respondent Bonifacio Sia

called her up and told her to finish all her works that night, but she told respondent that she would not be able to finish them all because it was already late; that she then left respondent's room but respondent called her again and asked her why she could not finish what she was told to do, to which complainant [Damasco] answered that it was already late and there were still a lot of things to do; that respondent asked her what she was doing since he (respondent) left for Manila, to which complainant told him that she was attending to the sales, to the field and to other things relative to the business of respondent, to which respondent got mad at her; that respondent asked complainant why she was not teaching her two (2) other co-workers on what to do, and she answered she would not do it anymore because if the other co-workers should commit mistakes in accounting, she was the first one to be lambasted by respondent and even required to share in paying the shortages; that when respondent heard this, he picked up and swiped an ashtray in front of complainant and it broke, after which, he threw some notebooks at complainant who began to tremble in fear and her whole body shook; respondent ordered her to go out of the room, lambasted her again and told her that he (respondent) does not want to see her face anymore ("ayaw ko nang makita ang pagmumukha mo rito"); that after respondent had left, complainant again trembled and she could not prevent herself from crying, her co-workers applied alcohol on her because her body was cold, given water to drink and after about an hour, complainant decided not to finish her work anymore because she felt weak; that one of his co-workers, Alma, brought her home and since then, she did not report for work anymore because she developed a phobia of respondent...

Disputing the claim of complainant, respondents maintain as follows: That sometime in the late part of August 1992, complainant was instructed by respondent to report for work in their store in Metro Manila as there is a necessity for her detail thereat for reasons that the employees there are new and do not have the experience and know-how in running the store specifically with regards (sic) to the sale of glass; that complainant manifested her objection to such detail for reasons that her husband is working in Olongapo City and she does not want to work in Manila; that thereafter, complainant did not report for work in the respondent's store in Olongapo City, so respondent sent some of his employees to the house of complainant but were told that she is sick and cannot report for work; that sometime in the first week of January 1993, respondent received a copy of the instant complaint filed by complainant; that immediately, respondent thru counsel sent a letter to complainant directing her to report for work on January 13, 1993 at its store in Olongapo City; that complainant ignored the letter despite receipt thereof, hence, on January 15, 1993, respondent again sent complainant another letter directing her to report for work on January 22, 1993 but just the same, complainant failed and refused to report for work; that it is not true as claimed by complainant that respondent shouted at her and swiped an ashtray from the table and threw at her some notebooks.... "

On December 7, 1992, Damasco filed before the NLRC Regional Arbitration Branch in San Fernando, Pampanga, a complaint against Bonifacio Sia and Manila Glass Supply (jointly referred hereafter as "Sia" for easy reference). In the one-page complaint form of the NLRC, Damasco indicated that she is suing her employer for illegal dismissal and non-payment of overtime pay.<sup>[2]</sup> However, in her complaint affidavit and position paper filed later before the labor arbiter, Damasco additionally charged her employer with non-payment of 13th month pay, service incentive leave pay, holiday pay and night shift differential.<sup>[3]</sup>

On September 2, 1993, the labor arbiter rendered judgment in favor of Ms. Damasco. The labor official declared that Sia has not shown any just or authorized cause in terminating the services of Damasco, except for wild, generalized and self-serving statements that Damasco committed serious misconduct or willful disobedience of the lawful orders in connection with her work. The labor arbiter also ruled that Damasco is entitled to 13th month pay, service incentive leave pay, holiday pay, overtime pay, and disposed of the case, thus:

"WHEREFORE, premises considered, judgment is hereby entered in favor of the complainant and against respondents, ordering the latter, as follows:

1. To pay the total sum of P112,570.32 representing unpaid 13th month pay, holiday pay, overtime and premiums pay, five (5) days service incentive leave pay, backwages and separation pay of complainant;
2. To pay attorney's fees in the sum of P11,257.00 which is ten (10%) percent of the award; and
3. All other claims or issues, for want of substantial evidence, are hereby DISMISSED.

SO DECIDED."<sup>[4]</sup>

On appeal, the NLRC upheld the labor arbiter's finding that Damasco was illegally dismissed but modified the labor official's judgment, thus:

"PREMISES CONSIDERED, the Decision of September 2, 1993, is hereby MODIFIED. Respondents are directed to pay complainant the following:

I.	Backwages	P43,680.00
II.	Separation Pay	36,400.00
III.	13th month pay	10,920.00
IV.	Service Incentive	2,100.00

	Leave Pay...	
V.	Holiday Pay	4,200.00
	.....	
VI.	Attorney's fees	1,722.00
	.....	
		SO ORDERED." <sup>[5]</sup>

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T O T A L ----- P99,022.00

Both parties filed motions for reconsideration which were denied.

On July 4, 1994, the NLRC issued an entry of judgment stating that the aforesaid judgment of the labor tribunal has become final and executory.

On July 7, 1994, the labor arbiter, upon motion of Damasco, issued a writ of execution. In compliance therewith, public respondent deputy sheriff issued the next day a notice of garnishment addressed to Far East Bank and Trust Company, Olongapo City, against all credits and deposits of Bonifacio Sia and/or Manila Glass Supply maintained in said bank, sufficient to cover the monetary award in favor of Damasco.<sup>[6]</sup>

In her petition, Damasco alleged that the NLRC committed grave abuse of discretion:

"...IN DELETING THE AWARD FOR OVERTIME PAY AND REDUCING THE ATTORNEY'S FEES IN FAVOR OF PETITIONER."<sup>[7]</sup>

In his memorandum, Sia raised the following issues for resolution, thus:

#### A

WHETHER OR NOT PUBLIC RESPONDENT LABOR ARBITER SALUDARES DEPRIVED PETITIONERS OF THEIR RIGHT TO DUE PROCESS AND THUS COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION

#### B

WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN AFFIRMING, ALBEIT WITH MODIFICATIONS, THE LABOR ARBITER'S PATENTLY NULL AND VOID DECISION."<sup>[8]</sup>

In our view, the crucial issue for resolution is whether or not the NLRC committed grave abuse of discretion in affirming the decision of the labor arbiter which held that Damasco was illegally dismissed from her job.

On August 1, 1994, we decided to consolidate the two petitions inasmuch as they involve the same parties and intertwined issues. Likewise, we issued a temporary